HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.13236 of 1995

Between:

Smt. V.L.N.Sarala Devi and another. … Petitioners

AND

Government of Andhra Pradesh,
represented by its Secretary,
Education Department,
Secretariat, Hyderabad and others. … Respondents.

:: O R D E R ::

Counsel for the petitioners : Sri P.Krishna Reddy

Counsel for respondent Nos.1 to 4 : Government Pleader for School Education.

Counsel for respondent No.5 : Sri Y.Rama Rao

24th October, 2006

In this petition filed under Article 226 of the Constitution of India, petitioners, Smt. V.L.N.Sarala Devi and Smt.I.Lakshmikantham, have prayed for issue of a mandamus to Secretary/Correspondent, Sri Telaprolu Bapanaiah English Medium High School, Bhavanarayana Street, Vijayawada (for short, 'the School') (respondent No.5) to pay them salary for the period during which they were forcibly kept out of employment and also the amounts due to them towards surrender leave and dearness allowance. They have further prayed for award of interest on the arrears of salary.

For deciding whether or not the petitioners are entitled to the

relief in terms of the prayer made, it will be useful to notice the undisputed facts.

While they were working as Head Mistress and Teacher respectively, in the employment of the School, the management dismissed them from service vide orders dated 11-3-1985 and 13-3-1985. On appeal, Regional Joint Director of School Education, Kakinada (respondent No.3) passed an interim order dated 3-7-1985, whereby he directed respondent No.5 to reinstate the petitioners. The latter challenged that order by filing an appeal before the State Government. During the pendency of that appeal, some employees of the School who were appointed in the vacancies caused due to the dismissal of the petitioners and who were not being paid salaries filed Writ Petition Nos.1544, 1545 and 1546 of 1987. By an order dated 3-4-1987, the High Court directed that the appeals preferred by the dismissed employees should be disposed of within three weeks. Thereafter, the State Government remanded the matter to respondent No.3 with a direction to decide the appeals of the petitioners on merits. In compliance of that order, respondent No.3 passed order dated 2-6-1987, whereby he allowed the appeals preferred by the petitioners and directed the management of the school to reinstate them. The further appeal preferred by the management was dismissed by the State Government, who decision was conveyed to the parties vide G.O.Rt.No.1452, Education (SS) Department, dated 29-10-1987. The management of the school challenged the last mentioned order in Writ Petition No.18273 of 1987, which was disposed of by the High Court on 22-4-1988 with a direction for fresh adjudication of the appeal. In compliance of that order, Secretary to Government, Education Department, again heard the arguments of the advocates representing the parties and passed order dated 30-8-1988 vide G.O.Rt.No.1239, Education (SS) Department, whereby he dismissed the appeal of the management.

After reinstatement, the petitioners represented for payment of

salary for the intervening period by asserting that in terms of paragraph 11 of G.O.Rt.No.1239, dated 30-8-1988, they are entitled to arrears of the emoluments. The State Government considered their representation and issued Memo dated 23-4-1991 vide which the management was directed to pay salary to the petitioners for the period during which they were forcibly kept out of employment. Thereafter, the Director of School Education issued Rc.No.476/D1-1/85, dated 30-5-1991 and instructed District Educational Officer, Krishna District, Machilipatnam to take further action in pursuance of Government Memo dated 23-4-1991. However, the management of the school refused to pay salary to the petitioners on the premise that it had not received grant-in-aid in respect of the posts held by them.

In the affidavit filed by Smt.V.L.N.Sarala Devi, petitioner No.1, it has been pleaded that in terms of Government Memo dated 23-4-1991 read with G.O.Rt.No.1239, dated 30-8-1988, they are entitled to salary for the intervening period i.e., the period during which they were forcibly kept out of job.

In the counter affidavit dated 11-9-2006 filed Sri T.Jairam Prasad, President and Correspondent of the School, it has been averred that salary and allowances cannot be paid to the petitioners for the period during which they remained out of employment because respondent No.4 has not released the corresponding grant-in-aid. In paragraphs 6 and 7 of his affidavit, Sri T.Jairam Prasad has averred that the posts held by the petitioners are aided posts and unless grant-in-aid is received, the management cannot pay them arrears of salary. Along with his affidavit, the deponent has annexed copy of Rc.No.300/D1-1/92, dated 21-10-1995 issued by Commissioner and Director of School Education for release of funds to Zilla Parishad for payment of arrears of salary to the petitioners for the gap period to show that it is the obligation of the government to pay arrears of salary to the persons employed against grant-in-aid posts.

I have heard learned counsel for the parties. Though the

petitioners have not produced copies of orders dated 3-7-1985 and 2-6-1987 passed by respondent No.3, a reading of order dated 30-8-1988 makes it clear that while dismissing the appeal preferred by the management against order dated 2-6-1987 passed by respondent No.3, the State Government unequivocally declared that the petitioners shall be entitled to arrears of the emoluments. This was reiterated in Memo dated 23-4-1991 as is evident from paragraphs 10 and 11 of order dated 30-8-1988 and paragraphs 2, 3 and 4 of Memo dated 23-4-1991, which are reproduced below:

Order dated 30-8-1988

"10. In the circumstances, Government hereby set aside the orders of the management of S.T.B.E.M.High School, Vijayawada dated 11-5-1985 dismissing Smt.V.L.N.Sarala Devi, Head Mistress, Smt. T.Satya Vani and Smt.S.Lakshmikantham, Teachers of the school and confirm the orders of the competent authority dated 2-6-1987 appealed against. In the result, the appeal petition dated 16-6-1987 preferred by the management is dismissed as devoid of merits.

11. The teacher-respondents should be entitled to the arrears of all the emoluments that are due to them."

Memo dated 23-4-1991

"2. As per the Government Memo.No.1765/SS.2/84-3, dated 17-2-1987, the procedure of payment of salaries to the Teachers by Government during the break period of removal and reinstatement shall be dispensed with and instead the Management should in all such cases be insisted to make payments. In view of this, the Director of School Education has suggested that the break period of the three Teachers may be condoned for pensionary benefit as shown below:-

1.Smt. V.L.N.Sarala Devi from 11-5-1985 to 18-12-1988.
2.Smt.Lakshmikantham from 14-3-1985 to 19-3-1989
3.Smt.T.Satya Vani from 14-3-1985 to 19-3-1989.

3. When the Government have set aside the orders of the Management of S.T.B.E.M. High School, Vijayawada, dated 11-5-1985 dismissing the above three Teachers of the School vide para 10 of the G.O.Rt.No.1239, Education, dt.30-8-1988 and in result the appeal petition dated 16-8-1987 preferred by the Management was dismissed as devoid of

> merits, the question of gap does not arise. The gap period from the date of discharge of duty to the date of reinstatement of the above three teachers may have to be treated as duty only (not condonation of gap) and they have to be paid salary for the said period by the Management."

Since respondent No.5 and the management of the school did not challenge order dated 30-8-1988 by filing writ petition under Article 226 or an appeal under Article 136 of the Constitution of India, the same will be deemed to have become final and, therefore, respondent No.5 is bound to implement the same. This is also the purport of the direction contained in Memo dated 23-4-1991 issued by the State Government. In this view of the matter, respondent No.5 - management of the school cannot contend that they are not bound to pay arrears of salary and allowances to the petitioners because the grant-in-aid has not been released by the competent authority. The plea of respondent No.5 that respondent No.4 is duty bound to release grant-in-aid has no bearing on the claim of the petitioners, who, as mentioned above, are entitled to arrears in view of order dated 30-8-1988 passed by the State Government and the directions contained in Memo dated 23-4-1991, and respondent No.5 cannot withhold payment of the amount due to the petitioners on the pretext of non-release of grant-in-aid. If there is any element of legitimacy in the claim of respondent No.5 for release of grant-in-aid, then the said respondent is free to avail appropriate legal remedy.

In the result, the writ petition is allowed. Respondent No.5 is directed to pay the arrears of salary and allowances to the petitioners within a period of three months from the date of receipt of copy of this order.

While disposing of the writ petition in the manner indicated above, I deem it proper to give liberty to respondent No.5 to represent to the Government for release of grant-in-aid and if necessary avail appropriate legal remedy for that purpose. Ordered accordingly.

G.S.SINGHVI, C.J.

24th October, 2006.

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